

Court File No.

FEDERAL COURT OF CANADA

B E T W E E N:

GLAD DAY BOOKSHOP INC.

Applicant

- and -

HER MAJESTY THE QUEEN and
MARGARET GILLIS

Respondents

A F F I D A V I T

I, ^{Jerald} ~~GERALD~~ MOLDENHAUER, of the City of Toronto in the
Municipality of Metropolitan Toronto, MAKE OATH AND SAY:

1. I am the owner and operator of Glad Day Bookshop Inc.
located in the City of Toronto.

2. Glad Day is the principal bookstore in the gay community
in Toronto. I have been the owner and operator for 19 years. We
carry a full range of books and magazines of interest to the gay
and lesbian community from scholarly works, fiction, non-fiction
and "adult entertainment".

↑
sounds hetero
anything might be better - "erotic"
or "material related to gay & lesbian
sexuality."

3. We have regularly imported books and magazines from the United States and elsewhere for sale in the store. They are typically shipped through Customs addressed care of staff members of the store.

*✓
either the store or to the
attention of individual*

4. Attached to this my affidavit and marked as indicated below are a series of Notices of Decision received from Canadian Customs with respect to certain seizures for alleged obscenity:

Exhibit "A" - November 29, 1988 - CO 7013

Exhibit "B" - November 30, 1988 - CO 7025

Exhibit "C" - December 5, 1988 - CO 7044

Exhibit "D" - December 5, 1988 - CO 7045

Exhibit "E" - December 8, 1988 - CO 7066

✓ Date
5. I filed appeals from these decisions to the Deputy Minister of Customs and Excise pursuant to the provisions of the Customs Act and Regulations. There has been no decision on that appeal to this date. Attached to this my affidavit and marked as Exhibit "F" is a true copy of my submissions filed with the Deputy Minister on this appeal.

6. I am advised by Margaret Gillis, the ^{Manager} Director of the Prohibited Importations Unit of Canada Customs, that the appeal was referred by their office to the Department of Justice before being sent to the Deputy Minister for his decision. In a number of conversations with her, she has advised me that no decision has yet been made.

7. Attached to this my affidavit and marked as the Exhibits indicated below are true copies of the Notices of Decision regarding certain further seizures by the Department:

Exhibit "G"	- August 2, 1989	- CO 0961
Exhibit "H"	- August 2, 1989	- CO 0964
Exhibit "I"	- August 2, 1989	- CO 0965
Exhibit "J"	- August 2, 1989	- CO 0966
Exhibit "K"	- August 2, 1989	- CO 0967
Exhibit "L"	- October 3, 1989	- CO 1763
Exhibit "M"	- October 4, 1989	- CO 1804
Exhibit "N"	- October 4, 1989	- CO 1805
Exhibit "O"	- October 4, 1989	- CO 1806

8. Margaret Gillis is the official who has custody of the seized material under the Customs Act at this time and is responsible for the continued detention.

may or may not be true

9. By agreement with Margaret Gillis, no appeal has yet been filed from the Notices of Detention Exhibits "G" through "O". This was done without prejudice to our right to file appeals in these matters subsequent to the decision in the November/December '88 seizures. She asserted, and I agreed, that many of the same books/magazines recurred in the successive shipments. She took the position in our oral conversations as I understood it that the first decision would govern the decision regarding the subsequent books.

10. Attached to this my affidavit and marked as Exhibit "P" is a true copy of a Notice of Detention with respect to a seizure August 10, 1989, FE 1017. This is the largest ^{single} seizure in this sequence. With respect to these books, there has not even been a decision made from which we could appeal. (Note that the form used by the Department is the same for the initial detention by Customs officials and the decision by Customs officials to detain the goods. The latter decision entails giving reasons by checking off a box).

11. Whatever the decision regarding the purported obscenity of the materials in question, the delays in determining the position of the Minister are financially prejudicial to my business

*within 30 days of
billing*

operation. I have to pay for the books and magazines when they are purchased from American distributors. (I estimate the value of the detained material herein described at ^{a wholesale value of.} \$5,000.00). Some of the titles are ^{involve time dated material} "current" and by the time decisions are made, will have lost ~~some of~~ their retail value. I am further concerned that it may damage my business relations with American distributors to try and return material to them one year after purchase should the Minister at this point determine that the material is obscene. They will probably refuse to take back the goods at this stage, especially if they are ^{even slightly physically damaged thru the ordeal} damaged.

12. As important is the fact that the cumulative effect of the delays is an infringement of the rights of free speech and expression of myself as a book dealer and of my customers and myself and my customers as readers.

13. The delays at the ministerial level are the first phase of delay in the determination of purported obscenity. We are not even able to exercise our rights of appeal under the Act until the Minister has made a determination. It took many months, even after the Minister's determination before the case could be determined at the trial level. We have previously successfully appealed the decision of the Minister regarding the book "The Joy of Gay Sex".